

March 11, 2024

John Midgette
Property Manager, Cityside
1771 Cityside Drive
West Palm Beach, FL 33401
Tel: 561 697-8997
jmidgette@seacrestservices.com

Dan St. Martin
Board Director and President, Cityside Condominium Association
[REDACTED]
[REDACTED]
bod@citysideonline.com

Gilles Kennedy
Board Director, Cityside Condominium Association
[REDACTED]
[REDACTED]
bod@citysideonline.com

Tom Foster
Board Director, Cityside Condominium Association
[REDACTED]
[REDACTED]
bod@citysideonline.com

Orie McIntosh
Board Director, Cityside Condominium Association
[REDACTED]
[REDACTED]
bod@citysideonline.com

SENT VIA EMAIL TO: jmidgette@seacrestservices.com; bod@citysideonline.com

Dear Cityside Property Manager and Board Members:

Re: Board elections (TIME SENSITIVE)

We write further to our letter of March 1, 2024, as no response to that letter has been received, and we are advised that Seacrest property management/the Board continues to provide incorrect

information to owners i.e. that there are three Board spots that are available via this year's director elections.

Pursuant to the Cityside annual budget, Cityside earmarks \$20,000.00 annually for legal advice. [We assume this is separate from the legal fees that are paid to lawyers who represent Cityside in lawsuits involving Cityside, as Cityside has legal fee insurance for those.] The Board of Cityside thus has legal counsel at its disposal to ensure compliance with its own bylaws and Florida statutes and regulations. **We urge the Board to provide their legal counsel with a copy of this letter.**

The Board owes a fiduciary duty to the owners of Cityside, which duty includes verifying compliance with the law (or lack thereof) when owners of Cityside (particularly two owners who are both lawyers) are advising you that your actions are not in compliance with the law and that your interpretation is legally incorrect.

Seacrest Property Management today advised a Cityside owner that Gilles Kennedy's and Orié McIntosh's Board seats are not open for this year's director elections, but that Dan St. Martin's, Thomas Foster's, and the open seat are.

This is not accurate.

When a Director is elected to the Board, they receive a two-year term, pursuant to Cityside Bylaw 4.2(d), which states:

(d) If, at the time of the first annual meeting of Members, Unit Owners other than Developer are entitled to elect some or all of the Directors, the terms of office of not more than two such Directors receiving the highest plurality of votes shall be two years, and the terms of office of the remaining Director or Directors elected by the next highest plurality of votes shall be one year. If, at the time of the first annual meeting of Members, Developer is entitled to designate some or all Directors, Developer shall have the right to designate for two year terms that number of Directors which, together with the Directors elected by other Unit Owners, if any, total two Directors. The remaining Director or Directors designated by Developer, if any, shall have terms of office of one year; the intention being that terms of office of Directors be staggered after the first annual meeting, with up to two Directors elected by Unit Owners other than Developer to serve the initial two year terms. **Thereafter, as many Directors shall be elected, or designated by Developer as the case may be, for two-year terms, as there are regular terms of office of Directors expiring at such times. Directors shall hold office for the terms to which elected or designated, and thereafter until their successors are duly elected, or designated by Developer, and qualified, or until removed in the manner elsewhere herein provided or as provided by law.** [Emphasis added.]

None of Gilles Kennedy, Dan St. Martin, Thomas Foster or Orié McIntosh were Directors appointed by the Developer of Cityside, and only came to be Directors many years after the Developer of Cityside went bankrupt. It appears that there have been no director elections in Cityside (due to fewer than 20% of owners casting votes) in at least seven years. Even assuming that Dan St. Martin, Thomas Foster and Gilles Kennedy were once – over seven years ago – elected to the Cityside board (rather than receiving their Board positions via appointment by other directors), the two-year term they would have received as a result of being elected to the Board would have long expired.

As a Director, you only get a two-year term when you are elected. You do not get a new two-year term when there is no valid election at the AGM such that there is no one to replace you. When there is no valid election and thus no one to replace Directors, pursuant to Bylaw 4.2(d), the Directors continue to hold their position “until their successors are duly elected” – meaning, their spot is open at the following year’s election, and the year after that, and the year after that – until someone is elected to replace them.

As set out in my prior March 1, 2024 letter, the Notices that Cityside has been sending out about the number of Director spots have been incorrect *for years*. There have been 5 spots available on the Cityside Board of Directors for years, yet the Notices have sometimes said two spots, and other times said three spots.

Orié McIntosh’s Board seat was likewise open for the 2023 AGM the same way it is open at the upcoming AGM. Orié McIntosh was appointed to his Board seat by Dan St. Martin, Thomas Foster, and Gilles Kennedy in late 2022. Orié McIntosh’s director position would have expired at the 2023 AGM, pursuant to Cityside Bylaw 4.2(c), which states:

(c) Vacancies on the Board may be filled, to expire on the date of the next annual meeting, by the remaining directors; except that, should any vacancy in the Board be created in any directorship previously filled by any person designated by Developer, such vacancy shall be filled by Developer designating, by written instrument delivered to any officer of the Association, the successor Director, who shall fill the vacated directorship for the unexpired term thereof. [emphasis added]

Given that Orié McIntosh’s board seat expired at the 2023 AGM, he continues to hold his Board seat in the same fashion as Dan St. Martin, Thomas Foster, and Gilles Kennedy – “until their successors are duly elected”, pursuant to Cityside Bylaw 4.2(d) excerpted above.

If any of Dan St. Martin, Thomas Foster, Gilles Kennedy, or Orié McIntosh wish to continue as a Director of Cityside beyond the 2024 AGM, they must either: 1) run for a director position and succeed via a valid election; or 2) hope that 75 votes are not cast such that a valid election is not held. In the first scenario, a successful campaign/valid election would result in the Director receiving a two-year term, pursuant to Cityside Bylaw 4.2(d), to expire at the 2026 AGM. In the latter scenario, the Director would continue as Director until the 2025 AGM, at which point their seat would once again be available for the election.

If the existing Board directors are going to continue to advance their erroneous interpretation of the Cityside bylaws, which affects the procedural and substantive rights of Cityside owners, we ask to immediately receive a copy of the legal opinion on which it relies.

Sincerely,

Jessica Gagné and Andrew Burgess
Owners

[REDACTED]

[REDACTED]

jessica@jessicagagne.ca

[REDACTED]